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UNIVERSITY**

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SUBJECT NAME- LAW OF CRIMES

SUBJECT CODE-BAL-504

LECTURE-29

OFFENCES AGAINST STATE

The Indian Penal Code, 1860 deals with offences against the State under Chapter VI (Section 121 to Section 130). The purpose of these codes is to ensure the safety of the State as a whole. The existence of the State can be safeguarded by giving severe punishments in case of offences against the State such as life imprisonment or the death penalty. Offences against the State as well as the government to disturb the public tranquillity, public order and national integration.

Waging War

Waging war means an attempt to fulfil any purpose of public nature by the means of violence. Such a war occurs when several people rise and assemble against the State in order to attain any object of public nature by force and violence. In order to constitute an offence against the State, the purpose and intention are taken into consideration and not the murder or the force.

Difference between Waging war and Rioting

BASIS	WAGING WAR	RIOTING
MEANING	Where the rising is for general purpose, affecting the whole community and directly strikes at the government department then it is waging war against the state.	Where the rising is primarily to accomplish some private purpose, affecting only those who are engaged in it without questioning the government authority then it is a riot irrespective of how numerous or outrageous it is. [1]
PURPOSE	It is against the Government of India.	It is against the public tranquillity.
SERIOUS OFFENCE	It is a more serious offence as compared to rioting.	It is a less serious offence as compared to waging war.
NUMBER OF PERSONS	The number of persons in waging war is not specific as it has not been mentioned anywhere.	The number of persons in rioting must be five or more.
MENTION IN	It is mentioned and explained under Section 121 to 123 of the Indian Penal	It is mentioned and explained under Section 146 to

THE CODE	Code, 1860.	148 of the Indian Penal Code, 1860.
PUNISHMENT	Serious punishment is given in such a case, that is, life imprisonment, or the death penalty, and fine.	Comparatively, less serious punishment is given, that is, imprisonment for two years, or fine, or both.

Waging War against the Government of India

Section 121 to Section 123 of the Code deals with waging war against the Government of India. Here, the phrase ‘Government of India’ is used in a much wider sense, that is, to imply the Indian State which derives the right and power of authority from the will and consent of its people. In other words, this expression signifies that although the State derives the power of authority from Public International Laws, however, such authority is vested by the people of the territory and is exercised by the representative government.

Under Section 121, the following are considered as essentials of the offences as they need to be proved in order to constitute an offence for waging war against the Government of India:

The accused must have:

- Waged war; or
- Attempted to wage war; or
- Abetted the waging of war.

Such a war must be against the State.

The punishment under this Section includes either life imprisonment or the death penalty. A fine can also be imposed in certain cases.

Whoever

The word ‘whoever’ is used in a broader sense and is not only limited to the people who owe loyalty to the established Government. Even the Supreme Court of India is unable to justify if the foreign nationals who enter into the territory of India for the purpose of disrupting the functioning of the Government and destabilising the society should be held guilty or not.

For instance, in the case of Mumbai Terror Attack, the first and the primary offence committed by the appellant and other conspirators was the offence of waging war against the Government of India. The attack was by foreign nationals and aimed at Indians and India. The purpose of this attack was to

accelerate communal tensions, affect the financial situation of the country and most importantly to demand India to surrender Kashmir. Therefore, under Section 121, 121A and 122 of the Code, the appellant was rightly held guilty for waging war against the Government of India.

Waging War

The phrase 'waging war' must be understood in the general sense and can only mean waging war in the manner usual in war. It doesn't include overt acts like collection of men, arms and ammunition. Also, in the international sense, the inter-country war involving military operations between two or more countries is not included under this type of war.

Under, Section 121 it has been made clear that 'war' is not conventional warfare between countries, however, joining or organising an insurrection against the Government of India is a form of war. Waging war is a way to accomplish any purpose of public nature by violence.

Intention

In the case of waging war intention and purpose are considered to be the most important factors to be examined behind such aggression against the Government. In such a war, murder and force are irrelevant.

Sedition and Abetting War

Both the offences are cognizable, non-compoundable and non-bailable. These offences can be tried in a Court of Session.

Section 124A of IPC deals with sedition. This offence means that the intention is to bring hatred or contempt or excite disaffection (including disloyalty and a feeling of enmity) against the Government of India.

Abetting the war is a special type of offence. The main purpose of such instigation should be necessarily waging of war.

For instance, in *Najot Sandhu's* case, the appellant was a part of the criminal conspiracy and was deemed to have abetted the offence. He took an active part in a series of steps taken for the purpose of the conspiracy. Therefore, the judgement given by the High Court was upheld and the appellant was convicted under Section 121 of IPC.

In a case under Section 121 of IPC if the charge doesn't set out the speeches to be seditious, then this doesn't spoil or affect the proceedings. Thus, it can be concluded that there is a difference between sedition and abetting war.

Conspiracy to Wage War

Section 121A was added to IPC in 1870. It states that it is not necessary for any act or illegal omission to take place explicitly in order to constitute a conspiracy.

This section deals with two types of conspiracies:

1. Conspiring to commit an offence punishable under Section 121 of the Code, within or without India.
2. Conspiring to overawe, that is, intimidated by means of criminal force or a mere show of criminal force against the Government.

The punishment under this Section includes imprisonment for ten years or life imprisonment along with a fine. Such punishment can be given by the Central Government as well as the State Government.

Preparation to Wage War

Section 122 of the IPC deals with the preparation of war. There is a difference between an attempt and preparation for committing the offence. The essentials of this Section are:

- Collection of men, arms and ammunition.
- There must be an intention to wage war or make preparations to wage war for such collection.
- The accused must participate in such collection.
- The war must be waged against the Government of India.

The punishment under this Section is either life imprisonment or imprisonment for ten years along with a fine.

For instance, if print material along with other things are found in the room of the accused, then they are neither considered objectionable nor infuriating. Thus the accused cannot be convicted under this Section.

Concealment of Design to Wage War

Section 123 of the IPC deals with the concealment of design to wage war. The essentials of this Section are:

- There must be an existence of a design which is prepared to wage war against the Government of India.
- The concealment should be done with the intention of facilitating the war against the Government of India.
- The person should be knowing about the concealment of the design.

The punishment under this Section is imprisonment of up to ten years along with a fine.

For instance, in the Parliament attack case, the accused had information of conspiracy along with a plan of terrorists. Thus his illegal omission made him liable under Section 123 of the IPC.

Waging War against Power

War Against Asiatic Power

Section 125 deals with 'Waging war against any Asiatic Power in alliance with the Government of India. This Section contempts the waging of war against any Asiatic power. Here, the accused should have waged war against the State or attempted to wage war, or abetted the waging of war. The essentials of this Section are:

- There must be an Asiatic State along with an international influence.
- Such a State should be other than India.
- Such a State should be in alliance with or at peace with the Government of India.

The punishment under this Section is life imprisonment or imprisonment for seven years along with a fine in some cases; or fine.

Depredation in Friendly Countries

Section 126 deals with 'Depredation on territories of Power at peace with the Government of India'. Depredation refers to an act of attacking. The essentials of this Section are:

- The accused should have committed or prepared to commit depredation.
- The act must be done on the territories of any power which is in alliance with or at peace with the Government of India.

Punishment under this Section is imprisonment for a term of seven years along with a fine. Any property used for the purpose of committing such offence or acquired as a result of this offence can also be forfeited.

NOTE: Section 126 is wider than Section 125, as the latter deals with the waging of war against Asiatic Power in alliance with the Government of India whereas the former Section applies to a Power which may or may not be Asiatic.

Receiving Property Taken by War or Depredation

Section 127 deals with the 'Receiving property taken by war or depredation as mentioned in Section 125 and 126'. The essentials of this Section are:

- The accused must have received any property.
- The accused must have been received the property by waging war with a Power at peace with the Government of India or by committing depredation on its territories.

Punishment under this Section is imprisonment for a term of seven years along with a fine. Also, the property must be forfeited.

Assault on High Officials

Section 124 of the IPC deals with the assault on high officials, that is, the President, Governor, etc. Such assault should be done with the intention of inducing or compelling the high officials to exercise or refrain from exercising their lawful powers. The ingredients of this Section are:

- The accused should have assaulted the President or the Governor of any State; or
- The accused should have wrongfully restrained the President or the Governor; or
- The accused attempted to assault or wrongfully restrain the President or the Governor; or
- The accused attempts to instigate or influence the President or the Governor with force or show of force with an intention to compel them from exercising or refraining from exercising their powers.

Escape of a State Prisoner

Section 128, 129 and 130 deals with the various aspects of the escape of a state prisoner.

The expression 'State prisoner' refers to a person whose imprisonment is necessary to preserve the security of India from internal disturbances as well as foreign hostility.

Section 128 of the IPC deals with 'public servants voluntarily allowing prisoners of State or war to escape'. The ingredients of this Section are:

- The accused should be a public servant; or
- The confined person should be a prisoner of State or war; or
- Such prisoner should be in the custody of the accused person; or

- The accused servant should have allowed such a prisoner to escape voluntarily.

NOTE: This Section doesn't apply in the case of the prisoner escapes during the transit.

The offence under this Section is an aggravated form of an offence under Section 225-A. In both cases, the public servant is punished if he voluntarily allows the prisoner to escape, however, under Section 225-A a prisoner may be an ordinary criminal.

Punishment under this Section is either life imprisonment or punishment for a term of ten years along with a fine.

Section 129 of the IPC deals with 'public servant negligently causing the prisoner of State or war to escape'. The ingredients of this Section are:

- The accused should be a public servant, necessarily at the time of committing the offence.
- Such a prisoner should be in the custody of the accused person.
- Such a prisoner should be rescued or escaped.
- Such an escape or rescue should be due to the negligence of the accused.

The offence under this Section is an aggravated form of an offence under Section 223. In both cases, the public servant is punished if he negligently causes the prisoner to escape, however, under Section 223 prisoner may be an ordinary criminal.

Punishment under this Section is simple imprisonment of up to three years along with a fine.

Section 130 of the IPC deals with the 'any person who aids or assists the escape of, rescuing, or harbouring of a prisoner of State or the war to escape'. This Section is more extensive as compared to Section 128 and 129. The ingredients of this Section are:

- The accused knowingly aids or attempts to aid, rescue, harbour or conceal such prisoner.
- Such a prisoner should be in lawful custody.
- The act or omission should be done intentionally or knowingly.

Punishment under this Section is life imprisonment or imprisonment up to ten years, and a fine.

Sedition

Section 124A deals with sedition. Under this Section, any person who by:

- Words, written or spoken; or
- Signs; or

- Visible representations; or
- Otherwise;

Brings or even attempts to bring hatred or excites disaffection (including the feeling of enmity and disloyalty) towards the Government of India, is punishable with:

- Life imprisonment along with a fine in certain cases; or
- Imprisonment for up to three years along with a fine in certain cases; or
- Fine.

Essential Ingredients of Section 124A

Words, Sign, Visible Representation or Otherwise

Sedition can be made in various ways- by words, written or spoken, by signs, or by visible representation. Seditious deeds include music, publications, performances (films and puppets), sculptures, photographs, cartoons, paintings and any other method.

Under sedition, it is immaterial whether the seditious articles are being used by the actual authors or not. The editor, publisher or printer is equally liable as the author in such a case. Thus, whoever wrote or used it for the purpose of exciting disaffection is guilty of sedition. In case, the accused pleads that he did not authorise the article, then the burden of proof lies with the accused. Moreover, if the accused is unaware of the contents of the published article or paper then he is not guilty under this Section as the intention is absent.

Sedition doesn't necessarily consist of written or spoken words but can also be of other kinds such as signs and by visual representation. For instance, it can be evidenced by a woodcut or engraving of any kind.

Brings or Attempts to Bring into Hatred or Contempt

The expression 'brings or attempts to bring into hatred or contempt' attempts to not interfere or interfere less with the freedom of speech.

For instance, the writers in the public press are not allowed to write or get indulged in improper or dishonest motives. A writer when publishes an article with a calm, unsentimental and dispassionate view, and discusses his little feelings that may or may not cause a man to think, are not considered to be seditious. However, if the article goes beyond and contains improper, corrupt and dishonest motive, then such an article is considered to be seditious.

Excite Disaffection

The term 'disaffection' includes disloyalty and all other feelings of enmity. In order to amount to sedition, an act of disaffection must be excited among the people. In other words, the feeling of disaffection must be stirred among the people of the State.

As per this Section, the disaffection can be excited in several ways, such as:

- Poem,
- Allegory,
- Historical or philosophical discussion,
- Drama, etc.

In order to amount to sedition, the publication is necessary. The publication can be of any kind and manner, including posts.

Government Established by Law

This expression refers to the existing political system which includes the ruling authority and its representatives. In other words, it refers to the people who are authorised by law to administer the Executive Government in any part of India. It includes the State Government as well as the Central Government.

An offence to come under this section must be directed toward the Government of India.

The following situations do not fall under the umbrella of sedition:

- Speech urging strike against businessmen or mill owners and not Government.
- Discouraging recruiting.
- Persuading people to not pay land revenue.

Thus, sedition means attacks on the established Government or the Sovereign. An attack on the justice administration does not fall under the ambit of Section 124A.

Expressing Disapprobation – Explanations 2 and 3

The phrase 'expressing disapprobation' simply refers to expressing disapproval. A man can be liked by someone, however, such liking doesn't necessarily amount to approval of that man's sentiments or actions. Explanation 2 and 3 give a plethora of options for people to make comments expressing disapprobation of the measures of the Government. It is done in order to obtain their alteration by lawful

means or other Government actions. All this can be done without exciting hatred or exciting disapprobation of the Government.

Explanation 2 and 3 have a limited scope and are strictly defined. Thus, the objective of these explanations is to protect bonafide criticism of public measures as well as their institutions, in order to improve. It is the right of the free press in a free country to accelerate changes in policy by criticising such measures. Nowadays, the freedom given to media is much more when compared to earlier years or pre-independence.

For instance, an article in the newspaper is not seditious when it attacks a proposed bill or the policy of the ministry, however, an attack on the ministry would amount to sedition.

Constitutional Validity of Section 124A

The provisions of this Section are not considered to be unconstitutional as being violative of the fundamental right of freedom of speech and expression under Article 19(1)(a) of the Indian Constitution.

Ram Nandan v. State of U.P. was the first case in which the constitutional validity of sedition was questioned. The Allahabad High Court held that the Section imposed a restriction on freedom of speech and was not considered to be in the interest of the general public. Therefore, this Section was considered as *ultra vires* to the constitution. However, it was overruled in the case of Kedar Nath Das v. State of Bihar. In this case, it was held that this Section would only limit the acts involving an intention to create a disturbance of law and order or enticement of violence. Thus, the Supreme Court held this Section *intra vires*.

Proposals for Reform

India is the largest democracy in the world and the right to freedom of speech and expression is an essential element of a democracy. A mere expression or thought about the government policy doesn't amount to sedition. Therefore, many proposals for reform have been made throughout the years.

Many proposals were made by the Law Commission in this regard:

- In 1968, that is, in 39th Law Commission Report, the idea of repealing this Section was rejected.
- In 1971, that is, in 42nd Law Commission Report, the scope of the Section was suggested to be expanded and include the Constitution, the legislature, the judiciary and the Government established by law.
- In August 2018, the Law Commission of India published a consultation paper suggesting to repeal Section 124A of the Indian Penal Code that deals with sedition.

- Recently the Law Commission of India has suggested in a consultation paper to invoke Section 124A to criminalise only those acts which are committed with the intention to disrupt public order or to overthrow the Government with violence and other illegal means.

Thus, it is unlikely that the Section would be scrapped sooner or later. However, the Section should not be misused.

Conclusion

Offences against the State play a crucial role in regulating and maintaining public order. The people of the State have a right to criticise the policies of the Government, however, they should not misuse their liberty to cause harm to the people around them or the Government. Waging war against India and against power is a punishable offence. The law also protects the high officials, such as the President, the Governor of every State etc. in case of assault against them. Most importantly, sedition is considered to be one of the most dangerous cognizable offences against the State. Thus, it can be concluded that the State needs to restrict the freedom of the people of the country for the betterment of the State.

MCQs-

i. The actus reus of conspiracy requires an agreement between two or more people to commit a crime. But what level of detail is required within this agreement?

- All details of the plan must be confirmed between the parties
- No detail is necessary, as long as the agreement is likely to result in the commission of a crime
- As long as D is clear on the details of the plan, it does not matter about the other parties to the agreement
- The agreement must necessarily involve the commission of a crime, but the exact details (eg, when and where) need not be resolved

ii. What is the mens rea for conspiracy

- D must intend to commit the principal offence
- D (and at least one other party in the agreement) must intend that one of them will commit the principal offence
- D must intend to commit the conduct and result elements of the principal offence, but the mens rea as to the circumstance element can reflect the mens rea required for the principal offence

D (and at least one other party in the agreement) must be at least reckless that one of them will commit the principal offence

iii. When applying the actus reus of the assisting and encouraging offences (Part 2 of the Serious Crime Act 2007), what does it mean for an act to be 'capable' of assisting or encouraging?

There must be potential for the conduct to assist or encourage P to commit the principal offence, but it need not do so in fact

The conduct must assist or encourage P in fact

P must be aware of the conduct assisting or encouraging, but there is no need to show that it has impacted her decision to commit the offence

The conduct must cause P to commit the principal offence

iv. What is the mens rea for the assisting and encouraging offence under section 44 of the Serious Crime Act 2007?

D must intend to assist or encourage P to commit the principal offence, intending that every element will be completed

D must believe that her conduct will assist or encourage P to commit the principal offence, believing that every element will be completed

D must intend to assist or encourage P's future conduct, must intend that conduct to happen, and must intend that the conduct will be done in the circumstances, causing the results, and with the required mens rea, for that principal offence

D must intend to assist or encourage P's future conduct, must intend that conduct to happen, and must be at least reckless as to that conduct being done in the circumstances, causing the results, and with the required mens rea, for that principal offence

v. When should the assisting or encouraging offence under section 46 of the Serious Crime Act 2007 be applied?

Where D assists or encourages P, intending the principal offence to be completed

Where D assists or encourages P, believing that the principal offence will be completed

Where D assists or encourages P, believing that one or more offences will be completed, but being unsure as to which

Where D assists or encourages P, believing that several offences will be completed